

## **Proposed Criminal Procedure (Enforcement Powers – Detention) (Non-Resident Detainee Suspected of Security Offense) (Temporary Provision) Law, 5765 – 2005**

### **Definitions**

1. In this Law -

“Detention Law” – the Criminal Procedure (Enforcement Powers – Detention) Law, 5756 – 1996;<sup>1</sup>

“Penal Law” – the Penal Law, 5737 – 1977;<sup>2</sup>

“authorizing official” – a Police officer holding the rank of commander or higher, who was empowered for this purpose by the head of the investigations and intelligence division of the Israel Police Force, or the head of the interrogations team or head of the interrogations branch of the General Security Service, who was so empowered by the director of the General Security Service;

“security offense” – an offense as set forth below:

- (1) any of the offenses enumerated in section 35(b)(1) to (5) of the Detention Law;
- (2) an offense pursuant to section 107 of the Penal Law;
- (3) an offense pursuant to sections 300, 305, 330, 454, and 497 of the Penal Law, 5737 – 1977, if the offense is committed in circumstances that harm state security or are connected with terrorist activity;

“officer in charge” – as defined in section 25 of the Detention Law;

“resident” – a person who is registered in the population registry, pursuant to the Population Registry Law, 5725 – 1965,<sup>3</sup> and any other person legally present in Israel for a period exceeding three consecutive years.

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<sup>1</sup> *Sefer Hachukkim* 5756, p. 338.

<sup>2</sup> *Sefer Hachukkim* 5737, p. 322.

<sup>3</sup> *Sefer Hachukkim* 5725, p. 270.

**Changes in application of the Detention Law regarding a person detained for security offenses**

2. During the period in which this Law is in effect, the provisions of the Detention Law shall apply to a detainee who is suspected of committing a security offense and at the time of his detention was not a resident (in this Law – detainee suspected of a security offense), subject to the changes set forth in this Law.

**Subject-matter jurisdiction**

3. Notwithstanding the provisions of section 2(1) of the Detention Law, every matter related to the detention of a detainee suspected of a security offense prior to the filing of an indictment shall be heard before a District Court judge who was authorized for this purpose by the president of the District Court.

**Delay in bringing a detainee suspected of a security offense before a judge**

4. Notwithstanding the provisions of sections 17(c), 29(a), and 30 of the Detention Law, the officer in charge may delay bringing a detainee suspected of a security offense before a judge for a period not exceeding 48 hours from the time the detention began, if he finds that the needs of the investigation so require; and he may, for the said reason and with the approval of the authorizing official, delay bringing the detainee before a judge for an additional period or periods not exceeding 24 hours each, provided that the total period of delay in bringing the detainee before a judge does not exceed 96 hours from the time the detention began.

**Detention by order prior to filing of indictment**

5. Every place in section 17(a) of the Detention Law that states “15 days” shall be read “20 days,” and in section 17(b), instead of “30 days” shall be read “40 days.”

**Hearing not in the presence of a detainee suspected of a security offense**

6. The provision of sections 16(2) and 57 of the Detention law regarding the presence of a detainee at the hearings as stated in the said sections shall apply to a detainee suspected of a security offense, with these changes –

(1) Where the court ordered in the presence of a detainee suspected of a security offense that he be detained for a period of less than 20 days, the court may extend, at a hearing in which the detainee is not present, his detention for a period not exceeding the balance of the 20-day period commencing at the time of the hearing at which he was not present; application for a hearing on the extension of the detention not in the presence of the

detainee, as stated in this section, shall be made with the approval of the authorizing official;

(2) A hearing on an application for reconsideration pursuant to section 52 of the Detention Law and a hearing on an appeal pursuant to section 53 of the said law shall be held without the detainee suspected of a security offense being present, unless otherwise ordered by the judge, after hearing the state's position regarding the detainee's presence at the hearing;

(3) The provisions of section 15(c) to (h) of the Detention Law shall apply, with the necessary changes, also to a hearing on the question of the detainee being present at the proceedings stated in this section.

(4) A decision made by the court in a hearing that is held when the detainee suspected of a security offense is not present shall be brought to the detainee's attention as soon as possible, unless the court orders otherwise, at the request of the state's representative, if the court finds that the needs of the investigation so require.

#### **Delay of meeting between a detainee suspected of a security offense and an attorney**

7. (a) Where a meeting between a detainee and an attorney is delayed pursuant to section 35(d) of the Detention Law for a period of 21 days, a Supreme Court justice may, upon application for such being made with the approval of the Attorney General, and where the grounds set forth in section 35(a)(3) of the said law apply, order delay of the meeting between a detainee and attorney for an additional period that shall not exceed seven days each time, provided that the total periods of delay shall not exceed 50 days.

(b) The provisions of section 35(g) to (i) of the Detention Law shall also apply to a detainee suspected of a security offense whose meeting with an attorney is delayed.

#### **Delegation of powers of the Attorney General**

8. Where the Attorney General delegated the authority granted him in section 17(b) or 35(d) of the Detention Law, pursuant to the provisions of section 242 of the Criminal Procedure Law [Consolidated Version], 5742 – 1982,<sup>4</sup> the delegation of authority shall also apply to the authority of the Attorney General regarding a detainee suspected of a security offense pursuant to sections 5 and 7.

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<sup>4</sup> *Sefer Hachukkim* 5742, p. 43.

### **Temporary order**

9. This Law shall remain in effect for one year from the day of its publication; however, the government may, with the approval of the Knesset, extend its validity for a period that shall not exceed one year.

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## **Explanatory Notes**

**Sections 1, 2, and 9** The proposed law is intended to arrange the powers needed by investigating authorities to interrogate a non-resident detainee who is suspected of committing security offenses (hereafter – detainee suspected of a security offense), while taking into account the special characteristics involved in investigating these offenses.

The interrogation of a detainee suspected of a security offense, which is done for the purpose of bringing him to trial and thwarting acts of terror, has special characteristics which justify the granting of special enforcement powers in addition to the powers granted by the Criminal Procedure (Enforcement Powers – Detention) Law, 5756 – 1996 (hereafter – the Detention Law). Among these special characteristics are the following:

1. Regarding detainees who are residents of the state, the investigating authorities have in most cases an information base resulting from the fact that the detainee stayed, prior to his detention, a significant period of time in Israel, and the center of his life during this time was in Israel. For such a resident, it is possible to collect information, question witnesses, obtain physical evidence, and the like. This is not true in the case of a detainee who prior to being detained was not a resident, that is – a person who stayed in Israel for a period less than three years prior to the time he was detained (see the definition of "resident" proposed in section 1), and the center of his life was a place to which the investigating authorities do not have access to information or an investigative capability.

2. The security offenses to which the proposed law applies are carried out in most cases on ideological or nationalistic grounds. Therefore, potential witnesses, if such exist, generally do not cooperate because they support the suspects or are hostile to the State of Israel. Also, as most cases involve the interrogation of persons who acted for nationalistic or ideological reasons, they generally refuse to cooperate with the interrogators, and a continuous and more prolonged period of interrogation than usual is required to get to an investigation of the truth.

3. Some interrogations must be carried out without interruption and without disturbance, particularly in the initial days of the interrogation, so as to enable the interrogation officials to prevent or thwart a terror attack.

Prior to the end of the military government in the Gaza Strip region, the investigating authorities had broader enforcement powers than those granted to investigating authorities pursuant to the Detention Law. These more extensive powers were provided by defense legislation enacted by the IDF commanders in the Gaza Strip region. With the end of the military government in the Gaza Strip region, the investigating authorities no longer have the said powers as regards residents of the Gaza Strip (such powers based on the defense legislation remain in effect regarding the Judea and Samaria region.)

The need for broader enforcement powers continues to exist even after the end of the military government in Gaza. Because of the special characteristics of such an interrogation, as mentioned above, these broader powers are required for the interrogation of every detainee suspected of a security offense who is not a resident of Israel.

It is proposed, therefore, that the Detention Law apply to detainees who are not residents and are suspected of committing security offenses, subject to the changes set forth in the proposed law, among them delay in bringing a detainee before a judge, conducting a hearing when the detainee is not present, and delaying the meeting between a detainee and his attorney.

The provisions of the proposed law make an effort to achieve the proper balance between the principles underlying our legal system regarding a suspect's rights in criminal proceedings, on the one hand, and the special need of the law enforcement authorities for broader powers regarding detainees suspected of a security offense because of the danger anticipated from them and because of the special characteristics of their interrogation, on the other hand.

It is also proposed, in section 9, that the law shall be in effect for one year, with the possibility of extending its validity for an additional year, so that during this period it will be

possible to enact a law that will determine the entire range of powers needed to thwart acts of terrorism and to investigate security offenses.

**Section 3** In accordance with the provision of section 2(1) of the Detention Law, the Magistrate's Court has the subject-matter jurisdiction to hear applications for a detention order or to extend detention prior to filing an indictment. It is proposed that, in light of the nature of the powers proposed in the proposed law, and the severity of the offenses with which it deals, applications to obtain a detention order, to extend detention, or to reconsider such decisions be within the jurisdiction of a District Court judge who is authorized for this purpose by the president of the District Court.

**Section 4** In accordance with the provisions of sections 17(c) and 29(a) of the Detention Law, the detainee must be brought before a judge within 24 hours from the time that he is detained. Section 30 of the Detention Law states that, if the officer in charge finds that an urgent action of investigation is needed, which cannot be done other than by detaining the suspect, and that the measure cannot be delayed until after he is brought before a judge, in order to carry out the urgent action, the officer in charge may delay bringing the detainee before the judge for a period of up to 48 hours from the time that the detention began.

The initial period of time in which the suspect is interrogated is extremely important for the purposes of the interrogation. In light of the danger inherent in security offenses, and the special investigation needs in interrogations of such a detainee who is not a resident, it is proposed to establish that, if after 24 hours of interrogation, the officer in charge is of the opinion that the needs of the interrogation so require, he may delay bringing the detainee before a judge for 48 hours from the time that his detention began. If, after this time has passed, the officer in charge finds that for the said reason there is need to delay bringing the suspect before a judge, it is proposed that he may, with the approval of a Police officer holding the rank of commander or higher or the head of an interrogations team or the head of the interrogators department in the General Security Service (hereafter – the authorizing official), again delay bringing the detainee before a judge for additional periods that shall not exceed 24 hours each time, up to a maximum period of 96 hours from the time that the detention began, after which the detainee must be brought before a judge.

**Section 5** In accordance with the provisions of section 17(a) of the Detention Law, a judge is authorized to extend the detention of a detainee for a period of no more than 15 days each time. It is proposed that, as regards a detainee suspected of a security offense, in light of the need for a longer period of time to carry out the special or complicated interrogations, which are intended to

cope with the special difficulties in these interrogations, the court shall have the power to extend the extension for 20 days each time.

For this reason, it is proposed that the provision set forth in section 17(b) of the Detention Law, whereby the approval of the Attorney General is needed in making application for a detention for a total period of more than 30 days, shall apply, in the case of a detainee suspected of a security offense according to the proposed law, only if the total period of detention exceeds 40 days.

**Section 6** The presence of a person in court at a hearing dealing with his matter is an extremely important right in Israel's system of law, and certainly when it involves the person's detention. However, removing a detainee suspected of a security offense from the detention facility to bring him to court is liable, in certain cases, to significantly harm the investigation and even thwart it. In such circumstances, it is necessary to balance the protection of the defendant's rights against the need to enable the enforcement authorities to investigate the matter without interruption, for the purpose of thwarting terror attacks or otherwise preventing a threat to life and public security.

Notwithstanding the provisions of section 16(2) of the Detention Law, which requires as a rule that the detainee be present at hearings to extend his detention, it is proposed that if the court ordered in the detainee's presence that he be detained for a period of less than 20 days, a further extension of the detention may be requested as regards the balance of the 20-day period from the time that the decision was given even if the suspect is not present at the hearing. For such a decision to be given, it is necessary that the application be made with the approval of the authorizing official.

It is also proposed that a hearing on an application for reconsideration [of a detention order] or on an appeal [against a detention decision], relating to a detainee suspected of a security offense to whom the proposed law applies, will be held as a rule without the detainee being present. However, the court may decide otherwise, after hearing the state's position regarding the presence of the detainee at the hearing.

It is proposed that, at the time of the hearing of the question of the presence of the detainee at the said proceedings, the provisions of section 15 of the Detention Law shall apply.

**Section 7** In accordance with section 35 of the Detention Law, the maximum period allowed for delaying a meeting between detainee and attorney is 21 days; as regards the period

exceeding 10 days, the president of the District Court is authorized to so order, provided that the Attorney General makes an application to him for that purpose.

It is proposed that, as regards a detainee suspected of a security offense, a justice of the Supreme Court be empowered, if application is made to him with the approval of the Attorney General, or a person delegated by the Attorney General for this purpose, to order a further delay in the meeting between detainee and attorney for an additional period of seven days each time, provided that the total period during which the meeting is delayed shall not exceed 50 days and the grounds set forth in section 35(a)(3) are met.

**Section 8** The provisions of section 242A and the Third Annex of the Criminal Procedure Law [Consolidated Version], 5742 – 1982, enable the Attorney General to delegate the authority given him in sections 17(b) and 35(d) of the Detention Law. It is proposed that, if the Attorney General delegates the said authority pursuant to the said section 242A, the delegation of authority shall also apply to his authority regarding a detainee suspected of a security offense, pursuant to sections 5 and 7 of the proposed law.